

ARKANSAS COURT OF APPEALSDIVISION I
No. CACR08-214CORDELL LAMONT COLEMAN
APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 10, 2008APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR 06-980]HONORABLE MARION A.
HUMPHREY, JUDGE

AFFIRM

KAREN R. BAKER, Judge

A Pulaski County Circuit Judge convicted appellant Cordell Lamont Coleman of one count of committing a terroristic act, in violation of Ark. Code Ann. § 5-13-310 (Repl. 2006); one count of battery in the first degree, in violation of Ark. Code Ann. § 5-13-201 (Repl. 2006); one count of possession of a gun on school property, in violation of Ark. Code Ann. § 5-73-119 (Repl. 2005); and three counts of aggravated assault, in violation of Ark. Code Ann. § 5-13-204 (Repl. 2006). Appellant was sentenced to ten years' imprisonment for the terroristic act and battery in the first degree convictions. He was sentenced to six years' imprisonment for each of the other convictions. His sentences were to be served concurrently. Appellant's only argument on appeal is that the evidence was insufficient to support his convictions because the State failed to show that appellant was in possession of a gun and that appellant was on school property. We disagree and affirm appellant's

convictions.

On December 12, 2005, Jaiman Russell, Jeremy Joiner, Britney Johnson, and Charles Layton were all riding in Jaiman's mother's Ford Explorer. Jaiman was driving, and Jeremy was in the front passenger seat. Britney and Charles were in the back seat. Jaiman testified that he pulled into Pikeview Elementary School and made a U-turn in order to get back onto McCain Boulevard going the opposite direction. He remembered a blue car—an old Cutlass Oldsmobile, he thought—pulling off McCain Boulevard into Pikeview Elementary School. He testified that he only remembered seeing the car and seeing the driver's side window of the car rolling down as it approached. Then, he heard gunshots. The gunshots came from the driver of the car. Jaiman saw the driver of the car and identified him at trial. He did not see a gun. He bent down to try to avoid the shots; however, he was hit twice by bullets. He then drove to the North Little Rock Police Station. He was taken to Springhill Baptist Hospital where he was later questioned by detectives. One of the bullets entered his arm and also exited. The other bullet only grazed his arm. Jaiman testified that he later heard that the reason for the shooting was that there was some conflict between appellant and Charles Layton, a passenger in Jaiman's vehicle.

The back passenger window of the Ford Explorer was shattered from a gunshot, and there were bullet marks on the vehicle. Jaiman was the only passenger in the vehicle that was hit by the bullets. Jaiman testified that when the shots were fired, he was near the front of the school, "in the school parking lot street." There were children present at the school that day.

Britney Johnson testified that she had known appellant since she was in the sixth grade

and that he was the driver of the car. She testified that the shooting happened at “Pikeview loop around.” The blue car pulled up to the Ford Explorer and the “shooting started.” At the sound of gunfire, her brother, Charles Layton, pulled her down in the seat. She described the car as a Cutlass, and she testified that appellant typically drove that car. She stated that, on the day of the shooting, appellant was driving and there was another person in the passenger seat. As the Cutlass approached the Explorer, appellant rolled his window down, and shots were fired. She did not see the gun. Several months after the shooting, she saw appellant. Appellant told her at that time that he apologized for shooting at the vehicle and that he thought someone else was inside the vehicle at the time he fired the shots.

Officer Carl Sorrells testified that he was on patrol the morning of the shooting. As he patrolled the area near Pikeview Elementary, he heard several gunshots. He drove over to the school and circled the parking lot. An employee of the school flagged him down. The school children were in various places around the school. Officer Sorrells found shell casings in several places on the driveway in front of the school where the parents and busses drop the children off, near the front doors. He stated that the main entrance to the school is right off McCain Boulevard. The road directly in front of the school served as the driveway for the school and was a part of school property. Detective Franks testified that he photographed the shell casings found at the scene. He testified that most of the casings were on the asphalt on the road in front of the school. He found nine casings at the scene. He also noticed the shattered glass on the road in front of the school.

The defense first presented testimony from Cassandra Reed, appellant’s cousin. She

testified that she and appellant spent the morning of December 12 together. Then, appellant took the stand. He stated that on the morning of December 12, appellant and Cassandra drove to a place on Cantrell Road so that he could pay his fines. In his testimony, he denied shooting anyone on December 12. He testified that he did not own a gun and that he did not have any prior felony convictions. He denied knowing Jaiman, Britney, or Charles. He also testified that he did not apologize to Britney after the shooting.

At the close of the State's case, appellant made a motion for a directed verdict. He renewed this motion at the close of all the evidence. The trial judge denied both motions.

Appellant's argument on appeal challenges the sufficiency of the evidence. A motion to dismiss in a bench trial is identical to a motion for a directed verdict in a jury trial in that it is a challenge to the sufficiency of the evidence. *Springs v. State*, 368 Ark. 256, 244 S.W.3d 683 (2006). In reviewing a challenge to the sufficiency of the evidence, we will not second-guess credibility determinations made by the fact-finder. *Stone v. State*, 348 Ark. 661, 74 S.W.3d 591 (2002). Instead, we view the evidence in the light most favorable to the State and consider only the evidence that supports the verdict. *Id.* We affirm the conviction if there is substantial evidence to support it. *Wilson v. State*, 88 Ark. App. 158, 196 S.W.3d 511 (2004). Substantial evidence is evidence of sufficient force and character to compel a conclusion one way or the other with reasonable certainty, without resorting to speculation or conjecture. *Crutchfield v. State*, 306 Ark. 97, 812 S.W.2d 459 (1991). A fact-finder may accept or reject any part of a witness's testimony, and its conclusion on credibility is binding on this court. *E.g., White v. State*, 47 Ark. App. 127, 886 S.W.2d 867 (1994). The fact-

finder is not required to believe any witness's testimony, especially the testimony of the accused, because he is the person most interested in the outcome of the trial. *Winbush v. State*, 82 Ark. App. 365, 107 S.W.3d 882 (2003).

Circumstantial evidence may constitute substantial evidence to support a conviction. *Flowers v. State*, 373 Ark. 119, ____ S.W.3d ____ (2008). The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.*

Appellant was convicted of committing a terroristic act. A person commits a terroristic act if, while not in the commission of a lawful act, the person shoots at or in any manner projects an object with the purpose to cause injury to persons or property at a conveyance which is operated or is occupied by passengers. Ark. Code Ann. § 5-13-310(a)(1). Appellant was convicted of battery in the first degree. Arkansas Code Annotated section 5-13-201(a)(1) states that a person commits first-degree battery when, “with the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon.” “Serious physical injury” is defined in Arkansas Code Annotated section 5-1-102(21) (Repl. 2006) as “physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ[.]” Appellant was also convicted

of possession of a gun on school property. Pursuant to Arkansas Code Annotated section 5-73-119(b)(1)(A), it is illegal to “possess a firearm upon the developed property of a public or private school, K-12.” Finally, appellant was convicted of three counts of aggravated assault. “A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely engages in conduct that creates a substantial danger of death or serious physical injury to another person.” Ark. Code Ann. § 5-13-204(a)(1).

Appellant asserts that the State failed to prove that he possessed a firearm; therefore, the State’s evidence was insufficient to support any of his convictions. Testimony at trial showed that when Jaiman entered the road directly in front of Pikeview Elementary School and made a U-turn, shots were fired at his vehicle from the driver’s side window of a blue Oldsmobile. Jaiman was injured by two bullets from a gun in appellant’s vehicle. Jaiman and Britney both had the opportunity to see that appellant was the driver of the car. Several months later, appellant approached Britney and apologized for the shooting, explaining to her that he had mistaken her and her companions for someone else. In addition to this testimony, evidence of the shooting, such as shell casings, was found in several places on the driveway in front of the school. Testimony showed that the street in front of the school served as the driveway for the school and was a part of school property. Although appellant denied the incident entirely, the trial court was not required to believe the testimony of any witness, especially that of the petitioner as he was the person most interested in the outcome of the proceedings. *See Harper v. State*, 359 Ark. 142, 194 S.W.3d 730 (2004). Here, the trial court found Jaiman

and Britney's testimony more credible than that of appellant, and no basis exists under these facts and circumstances to disturb the trial court's conclusions. Appellant also argues that there was insufficient evidence that he committed aggravated assault on two of the alleged victims, Charles Layton and Jeremy Joiner. He asserts that without the testimony of Layton and Joiner, there was no evidence that either of the young men were physically present in the vehicle or placed at risk. However, appellant did not raise the argument he now makes on appeal to the trial court; thus, this argument is not preserved for our review. A party cannot change the grounds for an objection or argument on appeal, but is bound by the scope and nature of the arguments made at trial. *Linn v. State*, 84 Ark. App. 141, 133 S.W.3d 407 (2003).

Based on the foregoing, we hold that substantial evidence that appellant committed the crimes supports his convictions.

Affirmed.

GLOVER and VAUGHT, JJ., agree.